IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 11198 of 2004

Between:

Syed Mohiuddin, S/o Syed Ahmad Ali,
r/o House No. 19-5-482/A/58/1,

Kisanbagh, Bhadurpura, Hyderabad.

..... PETITIONER

AND

1 The Station House Officer,

Nallakunta Police Station, Hyderabad.
2 The Commissioner of Police, Hyderabad

Police Commissionerate, Hyderabad.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records of FIR No. 81 of 2004 and issue an appropriate Writ direction or order more particularly one in the nature of Mandamus declaring that the actions of the respondents in calling the petitioners to police station and harassing him and his family members in connection with FIR No. 81 of 2004 is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India consequently directing respondents to desist from such actions against the petitioner and his family members in the interest of justice.

Counsel for the Petitioner: MR.P.Anand SESHU

Counsel for the Respondents1 & 2: GP FOR HOME

The Court made the following:

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.11198 OF 2004

ORDER :

The petitioner seeks a Writ of Mandamus declaring the alleged action of the respondents in calling the petitioner to the police station and harassing him as well as his family members in connection with Cr.No.81of 2004 on the file of the Nallakunta P.S. as arbitrary and illegal.

The petitioner states that Cr.No.81 of 2004 on the file of Nallakunta P.S. was registered on 05-04-2004 for the offence under Section 337 of the Indian Penal Code on the basis of the complaint lodged by one S.Kartik Reddy. As per the said complaint on 04-04-2004 while the complainant S.Kartik Reddy and his cousin Sri K.Raja Vamshidhar were crossing the road in front of Royal Function Hall, a motor

cyclist who came in wrong direction dashed them, due to which Raja Vamshidhar suffered multiple injuries. It is also stated in the complaint that the said Motorcycle bears Regn.No.AP 9 AQ 3502 and that the person riding the said vehicle was aged about 25 years who ran away along with the vehicle in spite of the attempts made by them to stop him. On the basis of the said complaint, having registered Cr.No.81 of 2004 the Sub-Inspector of Police of Nallakunta P.S. by name Mr.Upendar came to the house of the petitioner on 25-06-2004. The petitioner was absent at that time and the inmates of the house were enquired whether the motor cycle bearing No.AP 9 AQ 3502 was available in the house. They also searched the premises. Since the vehicle was not found, they enquired about the names of the persons living in the house and collected the name of the petitioner from the inmates. On 26-06-2004 a Constable from Nallakunta P.S. again visited the house of the petitioner and instructed the inmates of the house to send the petitioner to the police station. The inmates of the house also received some phone calls from the police as well as some other persons threatening them that unless the petitioner is sent to the police station all the family members will be taken to the police station and will be kept in lockup. The petitioner sates that he has nothing to do with the alleged accident that took place on 04-04-2004 involving the motor cycle bearing No.AP 9 AQ 3502 and that he does not even know to whom the said vehicle belongs. The petitioner also apprehends that the police personnel will subject him to torture and would falsely implicate him in Crime No.81 of 2004. Hence, this writ petition contending that the action of the respondents in harassing the petitioner and his family members without there being any justifiable reason is arbitrary and illegal and violative of Articles 14 and 21 of the Constitution of India.

The 1st respondent, the Inspector of Police, P.S. Nallakunta, who is the investigating officer in Cr.NO.81 of 2004 filed a counter-affidavit stating that the said crime was registered on the basis of the complaint of Sri S. Kartik Reddy complaining about the accident. The complainant furnished the number of the motor cycle as AP 9 AQ 3502 and stated that the motor-cyclist ran away with his vehicle and requested to take the necessary action. In pursuance thereof, Cr.No.81 of 2004 under Section 337 of I.P.C. was registered and the investigation has been taken up. During the course of investigation, both the complainant S.Kartik Reddy and the injured K.Raja Vamshidhar were examined. The injured in his statement stated that the number of

the crime vehicle is AP 9 AQ 3520. One M.Sandeep who is the eye witness also stated that the number of the crime vehicle is AP 9 AQ 3520. The complainant as well as all other witnesses stated that the crime vehicle was black colour Hero Honda Splendor and that they will identify the accused. The complainant appears to have mentioned the number of the crime vehicle as '3502' in his written complaint due to oversight. The 1st respondent obtained the ownership particulars of both the vehicles i.e, vehicle bearing Nos.3502 and 3520 which revealed that the number 3502 pertains to Suzuki Fierro Motor Cycle and the Registration No.3520 pertains to Hero Honda Motor Cycle registered in the name of Sri Syed Shabeer, resident of H.No. 8-3-169/891 Habeeb Fathima Nagar, Borabanda. On 25-05-2004 the presence of the said Sri Syed Shabeer was secured and he confirmed that the said vehicle is of black colour Hero Honda. In his statement, he stated that the said vehicle is registered in his name, but he has given the said vehicle to his brother-in-law who is a resident of Kishanbagh, Hyderabad and the same is presently available with his brother-in-law. He has also furnished the telephone number of his brother-in-law. When the 1st respondent tried to contact him on telephone, he was not available and therefore he left a message at his residence to direct him to the police station of Nallakunta for the purpose of investigation, but he did not turn up so far. The allegations made by the petitioner that the 1st respondent visited the house of the petitioner on 25-06-2004 in his absence and searched the premises has been denied. He stated that PC.6722 was deputed to the house of the petitioner to summon him for the purpose of investigation and when he was not available the inmates were requested to direct the petitioner to the police station for the purpose of investigation. Except that, either the petitioner or his family members were never threatened and the allegation is false. The allegation of the petitioner that he will be subjected to torture and will be falsely implicated in the offence has been denied and it is explained that the injured as well as the eye-witness will identify the accused who is responsible for the said offence and for the purpose of investigation the presence of the petitioner is essential.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Home appearing for the respondents.

The plea of the petitioner that he has nothing to do with the alleged accident that

took place on the intervening night of 4/5-4-2004 and that he never drove any motor cycle and that he does not even know to whom the crime vehicle belongs are all the aspects which require due enquiry by the investigating officer. The 1st respondent, being the competent authority, having registered a crime on the basis of a complaint of a citizen is bound to proceed with the investigation. In the case on hand, the specific case of the 1st respondent is that during the course of the investigation it is found that the crime vehicle is owned by one Syed Shabeer, who stated that the vehicle is presently in possession of the petitioner. If that be so, the investigating officer cannot be found fault with in summoning the petitioner for the purpose of ascertaining the said fact which is undoubtedly essential for the purpose of investigation. Though the petitioner filed a reply affidavit contending that as per the complaint the crime vehicle bears Regn. No.AP 9 AQ 3502 and that the respondents have intentionally altered the number as '3520' so as to involve the petitioner in the alleged incident, I am of the view that such a plea cannot be accepted at this stage and on that ground no Mandamus can be issued restraining the respondents from summoning the petitioner for the purpose of investigation. The matter is still under investigation and at this stage, it cannot be assumed that the respondents are attempting to shield the owner of Motor cycle bearing No.3502. Similarly, no relief can be granted on the mere apprehension that he will be tortured and falsely implicated in the offence.

Accordingly, the writ petition is disposed of leaving it open to the respondents to proceed with the investigation in accordance with law. No costs.

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23rd August, 2004.

Gbs

To

1 The Station House Officer,

Nallakunta Police Station, Hyderabad.

2 The Commissioner of Police, Hyderabad

Police Commissionerate, Hyderabad.

3. Two CCs to G.P. for Home, High Court Buildings, Hyderabad (OUT).

4. Two CD copies

THE HON'BLE MS. JUSTICE G.ROHINI

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